

DIVISION III

CACR06-751

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, Judge

February 14, 2007

MARCUS ANDERSON
APPELLANT

APPEAL FROM PULASKI COUNTY
CIRCUIT COURT
[NO. 2005-4427]

v.

HONORABLE JOHN LANGSTON,
JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Following a February 21, 2006 bench trial, appellant Marcus Anderson was found guilty of (1) possession of a controlled substance with intent to deliver, (2) maintaining a drug premises, and (3) possession of drug paraphernalia, and was sentenced to forty-eight months' imprisonment on each count, to be served concurrently. Anderson now appeals, arguing that the trial judge erred in declining to grant his motion for directed verdict because the State failed to introduce sufficient evidence to prove that he actually or constructively possessed the drugs or drug paraphernalia. We find no error and affirm.

On June 28, 2005, the SWAT team executed a search warrant on 2803 South Cumberland in Little Rock, after receiving information from a confidential informant (CI) who had participated in

several controlled drug buys at the residence. The majority of the State's case consisted of testimony from some of the police officers who had participated in the search.

Detective Troy Ellison testified that he followed the SWAT team into the residence and that he had "no idea" where Anderson was located when the search warrant was initially served, but asserted that Anderson was the only other person, besides police officers, at the residence. Ellison further testified that he discovered a jar filled with baggies of a substance that looked like marijuana and that the jar was located in the open on a shelf separating the kitchen area from the living room.

Detective Chris Littleton testified that he also entered the residence after the SWAT team executed the warrant and that he saw Anderson in custody in the living room. Littleton also stated that he saw no other civilians at the residence. Littleton found an Alltel telephone bill addressed to Anderson in the living room. Other items found by Littleton included a digital scale in the southeast bedroom, a plastic baggie containing a "green vegetable matter" inside a speaker box in the southeast bedroom, and a utility bill addressed to Berla Bullock in the southeast bedroom.

Sergeant Robert Mourot testified that he joined the search after the SWAT team had initially served the warrant and that he saw Anderson at the home, but had no idea where Anderson was located when the SWAT team first entered the residence. Mourot found several items of contraband in the southeast bedroom, including a small plastic bag containing green vegetable matter inside the doorframe of the closet right next to two Arkansas identification (ID) cards belonging to Anderson. Mourot admitted that no fingerprint analyses were performed on any of the confiscated items.

Willie Thomas, of the Little Rock Police Department's narcotics unit, testified that the CI could not identify the person who sold the drugs. Thomas asserted that Anderson was the only person at the house when the search warrant was executed. Thomas further testified that Anderson was on

the front porch when the initial group of officers arrived at the residence and that the police found no contraband on Anderson. Thomas also admitted that the police did not perform any forensics or fingerprint analysis on the confiscated items.

Detective Charles Allen testified that he found a red box containing \$300 in U.S. currency in the southwest bedroom, although he could not remember exactly where he found it. Allen also testified that he saw Anderson on the front porch when the warrant was served and that Anderson had been taken into custody.

Anderson moved for a directed verdict at the close of the State's case and the trial court denied the motion. In his case-in-chief, Anderson testified that he had resided at 2803 Cumberland for approximately one month and that he lived there with Berla Bullock, Stacey Palmer, and his brother, Gary Anderson. He testified that he did not have a key to the home and that on the day in question, he had left work early and was waiting on the porch for someone else to come home. He stated that when the police served the warrant, they immediately put him on the ground, arrested him, and then took him inside the house.

Anderson asserted that he had not seen or previously handled any of the items seized by the police. He further explained that everyone had agreed to put one bill in their name; that he hid his IDs in the frame of the closet in the southeast bedroom because he feared visiting friends and relatives might try to use the IDs for some untoward purposes, and his bedroom, which was originally meant to be a dining room, did not have a closet; that the southeast bedroom belonged to Bullock; that everyone kept "stuff" in Bullock's room because she had the computer and music equipment; and that the \$300 in the box was probably for bills. On cross examination, Anderson admitted that he had been convicted of possession of a controlled substance in 1994. He also admitted to pleading guilty to

possession of a controlled substance in 2003; however, he claimed that the drugs were actually found on his girlfriend, who was a passenger in the car he was driving, and that he only pled guilty to prevent her from getting into trouble.

Anderson appeals from the judgment and commitment order, arguing that the trial court erred in failing to direct a verdict in his favor because the State failed to prove that he constructively possessed the drugs at issue in this case. The State asserts that it presented sufficient evidence to support Anderson's convictions. We agree.

We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Parker v. State*, 355 Ark. 639, 144 S.W.3d 270 (2004). When reviewing a challenge to the sufficiency of the evidence, the appellate court will affirm a conviction if there is substantial evidence, when viewed in the light most favorable to the State, to support it. *Sublett v. State*, 337 Ark. 374, 989 S.W.2d 910 (1999). Substantial evidence is that which is of a sufficient force and character that it will, with reasonable certainty, compel a conclusion without resort to mere speculation or conjecture. *Id.*

Circumstantial evidence may be sufficient to provide the basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.* Furthermore, credibility determinations are left within the sound discretion of the trier of fact. *Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003). The trier of fact may resolve questions of conflicting testimony and inconsistent evidence and may choose to believe the State's account of the facts rather than the defendant's—the appellate court will not second-guess these determinations. *Id.*

In order to convict one of possessing contraband, the State must show that the defendant exercised control or dominion over the contraband. *Williams v. State*, 95 Ark. App. 307, --- S.W.3d --- (2006). The State, however, need not prove that the defendant exclusively or physically possessed the contraband; proof of constructive possession is adequate. *Id.* In order to prove constructive possession, the State must establish that the defendant exercised care, control, and management over the contraband and that the accused knew the item possessed was contraband. *Id.* Constructive possession may be implied when the contraband is under the joint control of the defendant and another, but joint occupancy alone is not sufficient to establish possession—the State must prove that the defendant exercised control and dominion over the contraband. *Id.*

Control and knowledge of contraband can be inferred from the circumstances, such as proximity of the contraband to the accused, whether the item is in plain view, and ownership of the property where the contraband is found. *See, e.g., Cherry v. State*, 80 Ark. App. 222, 95 S.W.3d 5 (2003) (affirming Cherry’s conviction for simultaneous possession of drugs and firearm, where the gun was found in Cherry’s kitchen near items used to manufacture methamphetamine). In *Sweat v. State*, 25 Ark. App. 60, 752 S.W.2d 49 (1988), this court reiterated that joint occupancy, coupled with some other factor linking the defendant to the contraband, is sufficient proof of constructive possession.

Here, the evidence revealed that several items of contraband were found in plain view on shelves separating the kitchen from the living room and in the kitchen cabinets, which are common areas that all occupants of a residence are presumed to use. *See id.* An Alltel bill addressed to Anderson at the residence was discovered in the living room, and Anderson was the only civilian present at the home. Police also confiscated a great deal of contraband from the southeast bedroom

and, although Anderson claimed that Ms. Bullock occupied this bedroom, Anderson's IDs were found near the confiscated contraband.

Although the State may not have presented the strongest case, it succeeded in providing sufficient evidence that Anderson lived at the residence and that the seized drugs and paraphernalia were subject to Anderson's control. Anderson acknowledges that some contraband was found in plain sight in the living room, that an Alltel bill addressed to him was found in the living room, and that a baggie of marijuana was found next to his two IDs in the southeast bedroom, but he maintains that he had no prior knowledge of the contraband. Furthermore, Anderson claims that he did not even have a key to the residence and, thus, could not have exercised care and control over the contraband because he did not have access to the items. Such matters are issues of credibility, and as we have stated previously, credibility determinations are left within the sound discretion of the trier of fact. This court will not second-guess the trial court's decision not to believe Anderson's version of events. Accordingly, we affirm Anderson's convictions.

Affirmed.

ROBBINS and GLOVER, JJ., agree.